IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1238 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any OJJJJJ : NO

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petitioner and learned advocate Shri Biren Vaishnav on caveat for the respondent.

2. Rule. Service of rule is waived by learned advocate Shri Biren Vaishnav for the respondent.

3. The Petitioner has challenged the validity of the award passed by the Labour Court, Baroda in Ref. (IT) No. 19/94 dated 6.3.2000. By virtue of the said award, it has been directed that the petitioner employer should not impose any punishment in pursuance of the show-cause notice which had been issued to the respondent workman.

4. The facts giving rise to the present petition are as under:-

5. The respondent is working as a watchman under the petitioner employer. On 24.11.1991 when the respondent was performing his duties as a Watchman along with some other watchmen, he had shown carelessness and negligence in performance of his duties and as a result thereof fire had taken place in the premises belonging to the petitioner employer. In the circumstances, it was ordered that by way of damages a sum of Rs. 20,000/- should be recovered from the respondent in 66 equal instalments of Rs. 300 per month and last instalment of Rs. 200. The respondent had raised a dispute and ultimately the dispute was referred to the Labour Court.

6. After hearing the concerned advocates and upon perusal of the record, the Labour Court dismissed the Reference but observed that the petitioner employer should not impose any punishment on the respondent in pursuance of a show-cause notice which was issued to the respondent though the show-cause notice referred to in the award was not subject-matter of the Reference.

7. Learned Advocate Shri Hardik Rawal appearing for the petitioner has made a limited submission to the effect that the Labour Court had exceeded its jurisdiction. It was not open to the Labour Court to make any observation with regard to the show-cause notice issued by the petitioner employer to the respondent watchman and yet the Labour Court had directed that no punishment should be imposed upon the respondent in pursuance of a show-cause notice issued to the respondent by the petitioner. In the circumstances, it has been submitted by the learned advocate that the impugned award is bad in law.

8. On the other hand, learned advocate Shri Biren Vaishnav appearing for the respondent has fairly conceded that it was not open to the Labour Court to make any observation on the show-cause notice which was not a subject-matter of the Reference. It has been however submitted by him that if again some proceedings are initiated against the respondent, the respondent would be put to undue hardship because the petitioner employer has already imposed upon the respondent a punishment whereby the respondent has to pay a sum of Rs. 20,000/- in 67 installments. It has been submitted by him that the said punishment of imposition of penalty appears to be sufficient. However, if this court feels that some other punishment should be imposed upon the respondent, the respondent is ready and willing to accept the punishment so as to avoid further litigation.

9. The learned advocates have fairly submitted that instead of initiating another set of proceedings against the respondent, it would be just and proper if this court passes an order for imposition of some punishment upon the respondent. If such a thing is done, the parties to the litigation shall be avoiding further litigation and suitable punishment would also have a deterrent effect on the respondent as well as other watchmen.

10. Looking to the facts and circumstances of the case, it appears that the amount of Rs. 20,000/- which has been directed to be recovered from the respondent appears to be little less as it is clear that the loss caused to the petitioner employer was much more than Rs. 20,000/-. In the circumstances, it is directed that instead of Rs. 20,000/-, a sum of Rs. 25,000/- should be recovered from the respondent from his salary. Every month a sum of Rs. 300/- should be deducted from the salary of the respondent for 83 months and the remaining amount of Rs. 100/- should be recovered from the salary of 84th month.

11. So far as the recovery of a sum of Rs. 25,000/is concerned, it is only for the purpose of compensating the petitioner employer because on account of negligence and carelessness shown by the respondent watchman, loss was caused to the petitioner employer to the tune of Rs. 25,000/-. Merely by paying the said amount to the Petitioner employer the respondent is not really punished because by paying the said amount he is only compensating the petitioner employer. In my opinion, ends of justice would be served if a punishment of stoppage of 3 increments with future effect is imposed upon the respondent. In the circumstances, it is directed that no

further proceedings shall be initiated in respect of the incident which has given rise to the present litigation and by way of punishment, 3 increments with future effect shall be stopped.

12. In the circumstances, the impugned award dated 6.3.2000 passed in Ref.(IT) No. 19/94 passed by the Labour Court, Baroda is hereby quashed. It is clarified that in view of this order a sum of Rs. 25,000/- shall be deducted from the salary of the respondent and punishment of stoppage of 3 increments with future effect shall be imposed upon the respondent.

Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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